



MONTANA DEPARTMENT OF CORRECTIONS ADMINISTRATIVE POLICY

Policy No.: DOC 1.5.6	Subject: OFFENDER RECORDS ACCESS AND RELEASE
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 6 and Attachments
Section 5: Case Records/Good Time	Revision Date: 01/24/00; 04/04/00; 07/22/05; 10/18/05
Signature: /s/ Bill Slaughter, Director	Effective Date: Dec. 1, 1996

I. POLICY:

It is the policy of the Department of Corrections to manage offender public and private records in compliance with all state and federal laws.

II. APPLICABILITY:

All Department division, facilities, and programs.

III. AUTHORITY:

<i>2-6-101, MCA</i>	<i>Definitions of Public Records</i>
<i>41-5-215, MCA</i>	<i>Youth Court and Department Records</i>
<i>41-5-216, MCA</i>	<i>Disposition of Youth Court, Law Enforcement, and Department Records</i>
<i>41-5-220, MCA</i>	<i>Electronic Records</i>
<i>41-5-221, MCA</i>	<i>Penalty for Unauthorized Disclosure of or Access to Records</i>
<i>45-5-624, MCA</i>	<i>Unlawful Attempt to Purchase or Possession of Intoxicating Substance</i>
<i>46-18-113, MCA</i>	<i>Availability of Presentence Investigation Reports</i>
<i>52-2-211, MCA</i>	<i>County Interdisciplinary Child Information Team</i>
<i>52-2-203, MCA</i>	<i>Cooperative Agreement Regarding Children's Services</i>
<i>Article II, § 9 & 10, Mont. Const.</i>	<i>Right to Know and Right of Privacy</i>
<i>4-4095, -4098, -4099, ACA</i>	<i>Standards for Adult Correctional Institutions, 4th Edition</i>

IV. DEFINITIONS:

Public Information - Includes age, name, date of birth, race, gender; date of commitment or release; date eligible for parole; date execution of sentence/commitment begins; court documents, unless expressly sealed by court order; date of execution of warrant; FBI number; fine(s) imposed; full term expiration date; jail credit time; facility of confinement; supervising program; participation or non-participation in a court-ordered program; judicial district of confinement and /or release; mandatory release date, if any; method of commitment or discharge; court docket number; offense; probation/parole action (*2-6-101, MCA*).

Private Information – Includes information in which an individual or corporation has a right of privacy; which, if released, would threaten the safety or security of a person or institution; which impacts the legitimate correctional interests of the Department; or, which is confidential criminal justice information; and, information about an offender's progress, or any other information specific to the offender's programming, whether court-ordered or not.

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Public Record for Juvenile Offenders - Includes only the youth court record information as set forth in 41-5-215(1), MCA.

Need to Know - The staff member requesting information must have that information in order to properly and adequately perform his or her job related duties and responsibilities.

Facility Administrator – The official, regardless of local title (administrator, warden, superintendent), ultimately responsible for the facility or program operation and management.

V. PROCEDURES:

A. Adult Offender Information Release

1. Public Information

- a) *may be released* without restrictions, *except* for the following:
 - (1) the information involves an individual's right of privacy;
 - (2) the information threatens the security or safety of a person or institution;
 - (3) release of the information impacts the Department's legitimate correctional interests; or
 - (4) the information is confidential criminal justice information.

2. Private Information

- a) *may not be released*; or
- b) released only to specific individuals

B. Offender Records

The Department's Legal Services Bureau will determine whether offender record information is public or private on a case-by-case basis. The following are examples of both types of information:

1. Public Information

- a) judgments, commitments, and other court documents;
- b) dispositions of the Board of Pardons and Parole; and
- c) information defined as "public record" by this policy.

2. Private Information

- a) information protected by a right of privacy:
 - medical, mental health, treatment information
- b) information that, if released, would pose a threat to security or safety:
 - identification or location of informants
 - information relating to incidents such as escape plans or disturbances
 - information related to victims of offenses
- c) information that impacts the Department's legitimate correctional interests

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- d) confidential criminal justice information:
 - NCIC information
 - information concerning a criminal investigation
 - fingerprints and photos
- e) sealed presentence investigation reports pursuant to *46-18-113, MCA*.

3. Restrictions

Release of private information contained in the offender's case file, other than information of public record, is prohibited *except* for the following reasons:

- a) information required by employees on a need-to-know basis;
- b) law enforcement agencies in conducting official activity;
- c) information for which the offender has specifically authorized release to his or her attorney or other persons authorized by statute. *A copy of the signed release form will be placed in the facility or program file;*
- d) medical records when necessary for medical care and treatment of the person whose records are requested. *The facility or program medical staff controls access to those files; and*
- e) research records approved in accordance with Department policy on research activities.

Staff who are authorized access to offender files are prohibited from releasing information, except to properly authorized representatives of law enforcement agencies or other persons authorized by statute, unless otherwise specifically authorized in writing by the facility or program administrator. Specific privacy requirements that apply to each facility or program will be incorporated into training as applicable.

4. Media and Public Inquiry

- a) media and public inquires for specific offender information will be referred to the public information officer (PIO) at the facility where the offender is housed, or to the Department's communications director;
- b) the designated PIO or communications director will explain release restrictions and provide the inquiring party with information authorized for release. Requests for additional information must be made in writing;
- c) when the request for information requires offender consent, the offender will be provided the opportunity to execute a release form authorizing staff to release specific information. The information request and the release form will become a permanent part of the facility or program file;
- d) if the offender does not consent to the information release, the inquiring party will be so advised; and
- e) for audit purposes, the facility PIO or communications director will maintain a record of all requests to include: date of request, person making request, and disposition.

5. Law Enforcement Agency Information Release

- a) in the course of normal facility or program operation, the Department may have other agency records in its custody, including Federal Bureau of Investigation identification records. Generally, FBI identification records are released only to bonafide

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representatives of law enforcement agencies, or produced in compliance with the order of a court of competent jurisdiction; therefore

- b) Department staff will be guided by the applicable regulations of the other agencies with respect to the release or production of any court records, FBI identification records, or other law enforcement agency information;
- c) the facility or program administrator will designate a staff member to respond to offender record inquiries and requests; and
- d) any concerns about release of facility or program records will be directed to the Department's Legal Services Bureau.

6. Release to Offenders

- a) offenders may make written requests to review file materials and may be granted access to review non-confidential portions of a file in which case the offender and the supervising staff member will sign and date the request;
- b) a designated staff employee will evaluate all file information provided to an offender to ensure that release of information will not endanger either the offender or others, or violate the privacy rights of the offender or others;
- c) an offender may request permission to grant authorization for review of his or her file by an Attorney of Record, or other person authorized by statute;
- d) Department approval for review of offender case file information will be made on a case-by-case basis by the Department's PIO (see B.4 above);
- e) an offender consenting to the release of information from his or her file will be required to sign an "Authorization for the Release of Information" form prior to the information release. This form will be devised and maintained in current form by the Department's Legal Services Bureau; and
- f) offender material that is marked "confidential" may not be included in file material made available to the Attorney of Record, or other non-Departmental sources, without the permission of the Department Director or facility or program administrator.

7. Consent for Release

Consent forms typically include the following items:

- name of person and agency or organization requesting information
- name of facility or program releasing information
- specific information to be disclosed and purposes of disclosure
- signature of offender and date of signature
- length of time release is valid
- signature of employee witness

C. **Youth Offender Information Release**

1. Releasable Information

- a) except as provided in *41-5-215, MCA*, all youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection until the records are sealed under *41-5-216, MCA*.

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2. Access, Paper and Electronic Records Requirements

- a) formal youth court records, law enforcement records, and department records that are not exempt from sealing under *41-5-216(4) & (6), MCA*, and that pertain to a youth covered by the youth court act must be physically sealed on the youth's 18th birthday;
- b) in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction;
- c) the requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case which the youth did not fulfill all requirements of the court's judgement or disposition, records referred to in *42-3-203, MCA*, or reports referred to in *45-5-624(7), MCA*;
- d) if an electronic record is released to a person authorized under *41-5-215, MCA*, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or when the record is sealed, whatever occurs earlier; and
- e) a person who discloses or accesses a department record in violation of *45-5-215, MCA*, or *45-5-216, MCA*, is guilty of a misdemeanor and shall be fined \$500.

3. Restrictions

Social, medical and psychological records, youth assessment materials, predisposition studies, supervision records of probationers, and any report, charge, or allegation that is not adjudicated are open only to the following:

- a) the youth court and its professional staff;
- b) representatives of any agency providing supervision and having legal custody of a youth;
- c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- d) any court and its probation and other professional staff or the attorney for a committed party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the offender;
- e) the county attorney;
- f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;
- g) a member of a county interdisciplinary child information team formed under *52-2-211, MCA*;
- h) members of a local interagency staffing group provided for in *52-2-203, MCA*; and
- i) persons allowed access to records under *45-5-624, MCA*.

D. Adult and Juvenile Offender Records Access

- 1. Offenders may access their case records and files consistent with applicable statutes and Department policies and procedures.
- 2. Offenders may review the public documents in their case records and files.

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3. Offenders may review the private documents in their case records when those documents are based on the offender's right of privacy.

E. Records Requests

1. Each facility and program will provide copies of offender records consistent with this policy.
2. Facilities and programs will collect a fee of .50 cents per page to offset the cost of providing copies and cover the staff time required to manage records in accordance with this policy.
3. The requesting party will be charged for the actual postage costs of providing copies.
4. Prior to approving records requests from secure facility offenders, staff must verify that offenders have sufficient funds in their accounts to cover the photocopying and postage fees. The fees will be debited from the offender account to whom the copies are provided.

VI. CLOSING:

Questions concerning this policy should be directed to the Department's Legal Services Bureau.

Attachments (filed electronically in policy manual)

<i>Health Information Request to Release Records</i>	(Attachment A)
<i>Youth Health Information Request to Release Records</i>	(Attachment B)

Health Information Request to Release Records

Patient
Name: _____

DOC ID/AO Number: _____ Date of Birth: _____

Social Security Number: _____

1. I authorize the use or disclosure of the above named individual's health information as described below:

2. All health care information in your possession, whether generated by you or by any other source, may be released to me or to _____ [name person] for:

_____ [purpose of the disclosure].

3. Covering the period(s) of healthcare:

From (date) _____ to (date) _____

From (date) _____ to (date) _____

4. Information to be disclosed:

- | | | |
|---|---|--|
| <input type="checkbox"/> Discharge Summary | <input type="checkbox"/> Progress Notes | <input type="checkbox"/> Operative Notes |
| <input type="checkbox"/> History & Physical | <input type="checkbox"/> Laboratory Tests | <input type="checkbox"/> Pathology Report |
| <input type="checkbox"/> Consultation Reports | <input type="checkbox"/> Emergency Rm Report | <input type="checkbox"/> X-ray/imaging Reports |
| <input type="checkbox"/> Immunization Record | <input type="checkbox"/> Complete Health Record | |
| <input type="checkbox"/> Other (please specify) _____ | | |

5. I understand that the information in my health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), human immunodeficiency virus (HIV) or Hepatitis A, B or C. It may also include information about behavioral or mental health services, and treatment for alcohol and drug abuse. I understand that my records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations.

6. The revocation is effective from the time it is communicated to the health care provider, except to the extent that action has been taken in reliance on this authorization. Unless otherwise revoked, this authorization is valid for up to 30 months from the date of execution below. If no expiration is specified this authorization will automatically expire six (6) months from the date of signing. This authorization does not permit the release of health care information relating to health care that the patient receives more than 6 months from the date of execution below. Mont. Code Ann. §50-16-527.

7. The Montana Department of Corrections, Montana State Prison, its health care providers, employees, officers, and physicians are hereby released from any legal responsibility or liability for disclosure of the above information pursuant to the Uniform Health Care Information Act, Mont. Code Ann. §50-16-501 through §50-16-553 or the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d..

8. I understand that any disclosure of information carries with it the potential for an unauthorized redisclosure and the information may not be protected by federal confidentiality rules.

Signature of patient or patient's representative

Date

Relationship to the patient

Witness

Date

*This authorization is valid for up to 30 months from the date above.

NOTE: This form is pursuant to *DOC Policy 4.5.29, Confidentiality of Offender Health Records and Information*, and *DOC Policy 1.5.6, Offender Records Access and Release*.

Youth Health Information Request to Release Records

Patient
Name: _____

DOC ID/JO Number: _____ Date of Birth: _____

Social Security Number: _____

1. I authorize the use or disclosure of the above named individual's health information as described below:

2. All health care information in your possession, whether generated by you or by any other source, may be released to me or to _____ [name person] for:

_____ [purpose of the disclosure].

3. Covering the period(s) of healthcare:

From (date) _____ to (date) _____

From (date) _____ to (date) _____

4. Information to be disclosed:

- | | | |
|---|---|--|
| <input type="checkbox"/> Discharge Summary | <input type="checkbox"/> Progress Notes | <input type="checkbox"/> Operative Notes |
| <input type="checkbox"/> History & Physical | <input type="checkbox"/> Laboratory Tests | <input type="checkbox"/> Pathology Report |
| <input type="checkbox"/> Consultation Reports | <input type="checkbox"/> Emergency Rm Report | <input type="checkbox"/> X-ray/imaging Reports |
| <input type="checkbox"/> Immunization Record | <input type="checkbox"/> Complete Health Record | |
| <input type="checkbox"/> Other (please specify) _____ | | |

5. I understand that the information in my health record may include information relating to sexually transmitted disease, acquired immunodeficiency syndrome (AIDS), human immunodeficiency virus (HIV) or Hepatitis A, B or C. It may also include information about behavioral or mental health services, and treatment for alcohol and drug abuse. I understand that my records are protected under the federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2, and cannot be disclosed without my written consent unless otherwise provided for in the regulations.

6. The revocation is effective from the time it is communicated to the health care provider, except to the extent that action has been taken in reliance on this authorization. Unless otherwise revoked, this authorization is valid for up to 30 months from the date of execution below. If no expiration is specified this authorization will automatically expire six (6) months from the date of signing. This authorization does not permit the release of health care information relating to health care that the patient receives more than 6 months from the date of execution below. Mont. Code Ann. §50-16-527.

7. The Montana Department of Corrections, Youth Services Division, its health care providers, employees, officers, and physicians are hereby released from any legal responsibility or liability for disclosure of the above information pursuant to the Uniform Health Care Information Act, Mont. Code Ann. §50-16-501 through §50-16-553 or the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. 1320d..

8. I understand that any disclosure of information carries with it the potential for an unauthorized redisclosure and the information may not be protected by federal confidentiality rules.

Signature of patient or patient's representative

Date

Relationship to the patient

Witness

Date

Signature of Patient's Parent or Guardian

Date

Relationship to the patient

Witness

Date

*This authorization is valid for up to 30 months from the date above.

NOTE: This form is pursuant to *DOC Policy 4.5.29, Confidentiality of Offender Health Records and Information*, and *DOC Policy 1.5.6, Offender Records Access and Release*.